IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 952 OF 2006

IN

APPEAL NO. 68 OF 2006

IN

NOTICE OF MOTION NO. 3743 OF 2004

IN

SUIT NO. 877 OF 1993

Ahmed R. Currim & Ors... ..... Appellants.

Versus

Lakhamshi Meghji Chheda & Ors..... Respondents.

Mr. S.H.Mehta with Mr. O. Mohandas i/by M/s. M & M Legal Venture for the Appellants.

Mr. P. K. Samdani, Senior Counsel, with Mr. Ketan Parekh i/by M/s. Prakash & Co., for Respondent Nos.1 to 4.

Mr. K. N. Gaikwad for Respondent Nos.10 and 11.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 15TH DECEMBER, 2006.

P.C.:

We heard Mr. S. H. Mehta, Counsel for the appellants / applicants and Mr. P. K. Samdani, Senior Counsel for respondent nos.1 to 4.

2. By this notice of motion, during the pendency of appeal, the appellants, who are original plaintiffs, pray for restraint order against respondent nos.1 to 4, from obstructing or preventing the appellants or their vehicles from entering and/or leaving the subject building from the north west, south west and main central entrances of the suit building.

3. The appeal arises from the order dated 15th September, 2005 whereby the motion Judge declined to grant prayer (b) of the notice of motion no. 3743 of 2004. The appeal was admitted on 27th February, 2006 and the order indicates that it is admitted only to the extent, prayer (b) was denied by the learned motion Judge. Prayer (b), as seen, is the same prayer which is now sought for in the present notice of motion by way of an interim order during the pendency of appeal.

4. In the impugned order the learned trial Judge has recorded the undertaking of the respondent no.1 (defendant no.1) that the entrance of the main building, which is an entrance for every person to enter and exit, will remain open and obstruction free and he will not in any manner encroach upon and carry

out any unauthorised construction or obstruct the said access to the suit building. Mr. P. K. Samdani, Senior Counsel, for and on behalf of the respondent nos.1 to 4, reiterates the undertaking that has been recorded by the learned motion Judge in the impugned order. Mr. P. K. Samdani also submits that ingress and egress from north west to south west entrance in the suit building is also available to the appellants. He also submits that the appellants are free to use and enjoy the garages (except garage no.3) of which the appellants are tenants and to that extent there is no obstruction or hindrance by the defendants. His submmission is that the appellants are not entitled to park their vehicles in the compound wall and to that extent the appellants are being obstructed by the defendants and nothing beyond it.

5. At this stage, in view of the statement of Mr. P. K. Samdani, we are satisfied that nothing more needs to be done in the motion.

6. We, accordingly, record and accept the undertaking given by Mr. P. K. Samdani for and on behalf of respondent nos.1 to 4 to the following effect:

"The respondent nos.1 to 4 shall not cause any

obstruction at any of the entrances of the building, namely, main entrance as well as entrances on north west and south west. The appellants shall also be entitled to bring their vehicles inside the compound for the purposes of parking the same in the garages of which they are tenants, save and except garage no.3."

In other words the ingress and egress through all the three gates, viz., main central, south west and north west shall be available to the appellants without any obstruction or hindrance by the respondent nos.1 to 4. However, the appellants shall not park their vehicles in the compound wall.

7. We order accordingly, dispose of the Notice of Motion.

8. The undertaking given for and on behalf of respondent nos.1 to 4 by Mr. P. K. Samdani and accepted by us is only for the purpose of disposal of this notice of motion. The appeal shall be considered on its own merits.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)